

Overview of HB1017: Patient Choice in Data Sharing and Modernizing the Illinois Mental Health Confidentiality Act¹

HB1017 permits authorized users to share patient mental health records in real time via the Illinois Health Information Exchange (ILHIE) and participating Illinois regional Health Information Exchanges (HIEs).

Exchange of patient health information among behavioral health and medical providers electronically and in real-time will facilitate care coordination, improve patient outcomes and reduce costs. HB1017 also facilitates patient involvement and informed decisions.

Patient Choice HB1017 gives patients a choice to participate in real-time data sharing facilitated by an HIE. Patients who are receiving care from a provider connected to an HIE will be able to:

- Choose to have mental health information sent by the HIE for treatment purposes in real time; or
- Choose to not have mental health information sent by the HIE by exercising the patient's right to "opt-out," but rather choose to have some information sent by fax/U.S. Mail (which is how information is sent today); or
- Decline to allow any information to be shared between their providers.

A patient may opt-out or revoke the choice to opt-out (i.e., opt back in) at any time.

HB1017 provides that each patient must be provided a reasonable opportunity to "opt-out" of participation in the HIE to which a provider is connected, and meaningful disclosure regarding the HIE. HB1017 delegates to the ILHIE Authority the annual duty to adopt standards, rules or contractual provisions which specify for all participating HIEs the specific form and content of the patient's "opt-out" right and the required meaningful disclosure. An explanation of the purposes of the HIE, and audio, visual and written instructions on how to opt-out of the HIE are to be published by the HIE on its website. Patients must be provided a written notice directing them to the HIE's website.

Currently, the patient's choice regarding a provider's use of HIE applies to that patient's medical record in its entirety ("all-or-nothing"). HB1017 provides that as the technology improves to enable the selective electronic exchange of only selected portions of a patient's medical record, the ILHIE Authority, an agency of the State of Illinois, will annually review the state of technology and adopt appropriate standards and rules to have HIEs give effect to patient preferences for selective disclosure of their medical records. In conducting its annual review of data segmentation

ENDORSEMENTS

- Community Behavioral Healthcare Association of Illinois
- Illinois Academy of Family Physicians
- Illinois Alcoholism and Drug Dependence Association
- Illinois Association of Rehabilitation Facilities
- Illinois College of Emergency Physicians
- Illinois Hospital Association
- Illinois Psychiatric Society
- Illinois Primary Health Care Association
- Illinois State Medical Society
- National Association of Social Workers – Illinois Chapter

¹ Illinois Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110

technology, the ILHIE Authority is directed to consider information provided by affected persons or organizations regarding the flexibility, availability, cost, reliability and interoperability of any technology or process under review.

Care Coordination HB1017 also facilitates care coordination for mental health services. It clarifies that existing exceptions for the disclosure of mental health information without patient consent also apply to disclosures by and among integrated health systems and members of an interdisciplinary team providing treatment and care coordination. The exception to obtaining patient consent for treatment and care coordination disclosures is separate from and independent of a provider's use of HIE (and the exception arising from use of an HIE).

HIPAA Alignment HB1017 also modernizes Illinois law to more clearly follow corresponding federal HIPAA law in several respects:

- Providers and HIEs customarily utilize external IT specialists to provide various IT services. Such agents are defined under federal HIPAA as “business associates” and are subject to a number of requirements to safeguard the privacy and security of patient data to which they may have access. HB1017 adopts the federal HIPAA “business associate” concept and thereby imposes upon such agents the privacy and security obligations of federal HIPAA.
- In order to prepare patient data for submission to public health and quality oversight authorities, or to conduct medical research, certain information in a record that would identify a particular patient is customarily removed, to create a “limited data set” or “de-identified” data. HB1017 adopts the federal HIPAA “de-identification” safeguards for those occasions when providers and HIEs provide patient data to their “business associates” for such data processing.

Participating HIEs The ILHIE supports a federated system of health information organizations that includes Illinois regional HIEs. HB1017 applies to the ILHIE and to seven (7) Illinois regional HIEs that have been participating in the regional HIE committee of the ILHIE Authority Board, and HIEs that in the future enter into an agreement with the ILHIE. They are:

- Central Illinois Health Information Exchange [Peoria]
- Illinois Health Exchange Partners, LLC [Metro East St. Louis]
- Lincoln Land Health Information Exchange, LLC [Springfield]
- MetroChicago HIE [Chicago]
- Northern Illinois Health Information Exchange [Rockford]
- Southern Illinois Health Information Exchange [Carbondale]
- TriRivers Health Information Technology, LLC [Rockford]

Providers are not required to utilize electronic record systems or to join an HIE as a result of HB1017. Providers that desire to utilize secure direct email messaging systems for electronic transmission of mental health records (apart from real-time HIE) are not affected by HB1017, and unless eligible for the “care coordination exception” (described above), will need to continue to obtain express patient consent for disclosure of mental health records as may be required under current law.

HB1017 will be signed into law this summer. The ILHIE Authority has begun its consideration of the standards, rules and contractual provisions that may be necessary for the implementation of HB1017.